IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION No. 974 of 1997

M/s.Keshavdas Hassanand & ors. .. Petitioners

versus

Chandan Ramchand Bhalla & ors. .. Respondents

...

Mr.A.A. Kumbhakoni with Mr.S.A. Sawant and Mr.H.V. Kode for the petitioner.

Mr.P.K. Dhakephalkar i/b M/s.Vimadalal & Co. for the respondent nos.1 to 3.

CORAM : B.H. MARLLAPALLE,J

DATED : 22nd August 2005.

ORAL JUDGEMENT :-

1. Shri Keshavdas, son of Hassanand was the husband of Smt. Parmeshwaribai and he was running a firm called M/s.Keshavdas Hassanand which has been impleaded as defendant no.1 in S.C. Suit no.4710 of 1996. In the said suit, Smt. Parmeshwaribai has been impleaded as defendant no.5. The couple begot

three sons, Hariram, Jamnadas and Ramchand. The plaintiff nos.1 and 2 in the said suit are the sons of Ramchand and plaintiff no.3 is the son of Hariram whereas defendant no.2 is the second son Jamnadas and defendant nos.3 and 4 are his sons Prakash and Haresh. Keshavdas had purchased plot of land bearing no.118 situate at Nowroji hill no.2, Dongri, Mumbai and he constructed a building therein consisting of shops and godown premises on the ground floor and residential premises on the upper floor. The building was known as 'kanchwala Building'. Keshavdas died on 21.4.1986 leaving behind him the last will and testament dated 9.7.1984 demising and bequeathing the will absolutely in favour of defendant no.5 to the exclusion of all other heirs and the LRs. His two sons viz. Jamnadas and Ramchand were appointed as executors of the said will. The executors jointly filed a testamentary petition bearing Testamentary Petition no. 284 of 1995 in this Court for probate.

2. Keshavdas had inducted in the defendant no.1 firm Jamnadas and Ramchand as partners along with himself and after the construction of the suit building in 1955.. The godowns were used for storing

the goods of M/s.Keshavdas Hassanand. On the demise of Keshavdas, defendant nos.3 and 4 joined the said partnership firm and Ramchand retired as the partner. M/s.Ram Glass House and M/s.Shivraj Glass House are the sole proprietory firms of Ramchand and M/s.Bharat Glass House is the sole proprietory concern of late Shri Hariram @ Dayaram. Hariram died when plaintiff no.3 was only 14 years of age.

3. The plaintiffs have approached the trial Court for the main relief of permanent injunction from obstructing, interfering in their full and free egress and ingress into the open space on the side and the passage of the plot of land of the suit premises where they are storing their glass sheets in any manner whatsoever. As per the plaintiffs, the open space area where they claim to be storing the glass sheets belonging to their firms is about 1500 sq.ft. They allege that on or about 27.6.1996, they were prevented from using the open space for storing of the goods belonging to their concerns and that is how the cause of action arise in filing of the suit on or about 26.8.1996.

4. The defendants filed their written statement

and opposed the suit. They also raised an objection to the pecuniary jurisdiction of the City Civil Court at Mumbai to entertain S.C. Suit no.4710 of 1996 and therefore, on 27.8.1997, the preliminary issue was framed u/s.9-A of the Code of Civil Procedure, as under :-

> "Whether defendants proved that the suit claim is not valid and that on proper valuation, this Court will not have pecuniary jurisdiction to entertain and try the suit?

5. by the impugned order dated 28th August 1997, the learned Ist Addl. Principal Judge of the City Civil Court at Mumbai was pleased to answer the preliminary issue in the negative holding that the suit claim is not invalid and the pecuniary jurisdiction is not ousted. Mr.Kumbhakoni, learned counsel for the petitioner defendants by referring to the averments made in the plaint as well as the written statement submitted that though the main relief was for permanent injunction, in fact the suit was filed for obliquely taking over the

possession of the open space area at 1500 sq.ft. It was further submitted that the plaintiffs were not using the open space around the building for storage of material and they had no access to the premises in any manner. The valuation of the suit claim at Rs.300/- for the purpose of the Court fees and jurisdiction u/s.6(iv)(j) of the Court Fees Act 19959 was a camouflage and the suit was not valued as required under the Bombay Court Fees Act 1959. The suit was required to be valued by taking into consideration the market price of the open space admeasuring about more than 1500 sq.ft and if so valued, it would not be within the pecuniary jurisdiction of the City Civil Court at Mumbai. Mr.Dhakephalkar, the learned counsel for the plaintiffs on the other hand has supported the impugned order deciding the preliminary issue in their favour.

6. The learned Ist Addl. Principal Judge noted that the plaintiffs approached the City Civil Court with a case that on 27.6.1996, defendant nos.1 to 4 had damaged the goods lying in the compound and they were prevented from removing their goods from the said compound. All that the

plaintiffs sought in the suit was unobstructed removal of the goods which were already lying in the compound as claimed by the plaintiffs. The valuation of the suit is required to be examined on the basis of the averments made therein and whether these averments are supported by evidence or not is a matter to be examined after the parties adduce evidence. Prima facie, it could not be accepted that the relief sought for in the suit was for possession of the open space between godown and the compound wall. This reasoning set out by the Courts below does not suffer from any errors apparent on the face of the record and therefore, no interference is called for in the impugned order.

7. In the result, this Civil Revision Application fails and the same is hereby dismissed. Rule is discharged with no order as to costs. Ad-interim order stands vacated and the trial of the suit is hereby expedited.

8. Mr.Kumbhakoni makes an oral application for continuing the ad-interim order for a period of two weeks. The said application is hereby rejected.

B.H. MARLAPALLE, J